

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

ROBERT L. ALLUM,

Plaintiff,

vs.

STATE OF MONTANA, MONTANA  
STATE FUND, DEPARTMENT OF  
LABOR, ANNA PUDELKA, MELISSA  
QUALE, THOMAS E. MARTELLO,  
WILBUR PINO, and DOES 1-100,

Defendants.

**CV-19-12-BMM-KLD**

**ORDER**

**INTRODUCTION**

Plaintiff Robert Allum filed a Notice of Appeal of this Court's August 27, 2020 Order (Doc. 72) adopting in part Magistrate Judge Kathleen DeSoto's Findings and Recommendations. (Doc. 73). Allum then filed with this Court a Motion and Affidavit to Proceed In Forma Pauperis on appeal on September 23, 2020. (Doc. 74). This Court entered an Order in this matter dismissing the final Defendant, Wilbur Pino, without prejudice on September 29, 2020. (Doc. 76). The Court directed Allum to file a corrected affidavit in support of his Motion to Proceed In Forma Pauperis (Doc. 74) on or before October 26, 2020. (Doc. 76 at

6). Allum failed to comply with the Court's Order and did not submit a corrected affidavit by the date specified.

### **DISCUSSION**

The Court determines that Allum's appeal is frivolous, because it lacks any arguable basis in law or fact. Fed. R. App. P. 24. Allum has failed to provide the Court with an affidavit that states the issues that Allum intends to appeal. Fed. R. App. P. 24(a)(1). The Court cannot certify to the Ninth Circuit that Allum's appeal is taken in good faith. *Id.*

All Defendants named in Allum's complaint have been dismissed. Defendants State of Montana, Montana Department of Labor and Industry, and Montana State Fund, argued to this Court on summary judgment that they are immune from suit under the Eleventh Amendment. (Doc. 72 at 4-9). Suits against Defendants Pudelka, Quale, and Martello in their official capacity were similarly barred. *Id.* This Court agreed. *Id.* The Court dismissed the Government Defendants because Allum failed to show that the Government Defendants had consented to suit in this case. *Id.* The Court later dismissed Defendant Pino because Allum did not show good cause for his failure to serve Pino. (Doc. 76).

The Court granted the Defendants' Motion for Summary Judgment (Doc. 56) on Allum's constitutional claims, holding that the claims were barred by res

judicata. (Doc. 72 at 3-4). The Court likewise granted summary judgment for Defendants on Allum's statutory claims. (*Id.* at 9).

Allum's Motion to Proceed In Forma Pauperis failed to include an affidavit that named the issues that he was appealing to the Ninth Circuit. (Doc. 74) Allum is required to include this information in his affidavit to this Court, so the Court can make an informed certification to the appellate court. Fed. R. App. P. 24. The Court gave Allum an opportunity to file an amended affidavit. (Doc. 76). Allum failed to correct his affidavit stating the issues he plans to appeal. This Court certifies to the Ninth Circuit that Allum's appeal is not taken in good faith. Fed. R. App. P. 24; *Barkeij v. Ford Motor Co.*, 230 F.2d 729, 731 (9th Cir. 1956).

In the interim between the Court's Order dismissing Defendant Pino (Doc. 76) and the October 26, 2020 deadline imposed on Allum to file an amended affidavit, Allum filed two motions. The first motion (Doc. 77) asked the Court to reconsider its Order (Doc. 72) adopting, in part, the Findings and Recommendations of Magistrate DeSoto. Allum's second motion requested summary judgment on the constitutional issues raised in his Amended Complaint (Doc. 14). (Doc. 79).

This Court has dismissed, without prejudice, all Defendants named in Allum's Amended Complaint. (Docs. 72 and 76). The Court's Order (Doc. 76) dismissing Defendant Pino made clear that this matter would be closed once Allum

filed a corrected affidavit in support of his Motion to Proceed In Forma Pauperis on appeal (Doc. 74) and the Court had ruled on the Motion. (Doc. 76 at 6). The Court denies Allum's Motion to Proceed In Forma Pauperis (Doc. 74) for the reasons stated above. Allum's pending motions (Docs. 77 and 79) are denied as moot, given the Court's dismissal of the final remaining Defendant.

### **ORDER**

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Proceed in Forma Pauperis (Doc. 74) is **DENIED**.
2. The Court **CERTIFIES** to the Ninth Circuit that Allum's appeal is not taken in good faith.
3. This case is **DISMISSED**. The Clerk of Court is directed to enter judgment and close the case.
4. Defendant's Motion (Doc. 77) for Reconsideration of Order Adopting Findings and Recommendations (Doc. 72) is **DENIED** as **MOOT**.
5. Defendant's Motion for Summary Judgment (Doc. 79) is **DENIED** as **MOOT**.

Dated this 27th day of October, 2020.



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Brian Morris, Chief District Judge  
United States District Court